United Nations CERD/C/JPN/CO/10-11

International Convention on the Elimination of All Forms of Racial Discrimination

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Committee on the Elimination of Racial Discrimination

Concluding observations on the combined tenth and eleventh periodic reports of Japan*

1. The Committee considered the combined tenth and eleventh periodic reports of Japan (CERD/C/JPN/10-11), submitted in one document, at its 2662nd and 2663rd meetings (CERD/C/SR.2662 and 2663), held on 16 August and 17 August 2018. At its 2676th meeting, held on 28 August 2018, it adopted the present concluding observations.

A. Introduction

2. The Committee welcomes the submission of the tenth and eleventh periodic reports of the State party.

3. The Committee expresses its appreciation for the frank and constructive dialogue with the State party's large delegation. The Committee wishes to thank the delegation for the information provided during the consideration of the report, and for the additional written information submitted during the dialogue.

B. Positive aspects

4. The Committee welcomes the following legislative and policy measures taken by the State party:

(a) Adoption of the Action Plan to Combat Trafficking in Persons in 2014 and establishment of a Council for the Promotion of Measures to Combat Trafficking in Persons;

(b) Adoption of the Fourth Basic Plan for Gender Equality on 25 December 2015;

(c) Adoption of the Act on the Promotion of Efforts to Eliminate Unfair Discriminatory Speech and Behaviour against Persons Originating from Outside Japan in June 2016;

(d) Adoption of the Act on the Promotion of the Elimination of Buraku Discrimination in December 2016;

(e) Adoption of the Act on Proper Technical Intern Training and Protection of Technical Intern Trainees in November 2017.

C. Concerns and recommendations

Previous concluding observations

5. The Committee is concerned that several recommendations from its previous concluding observations (CERD/C/JPN/CO/7-9) remain unimplemented.

* Adopted by the Committee at its ninety-sixth session (6–30 August 2018).

6. **The Committee recommends that the State party ensure the implementation of recommendations contained in the present and previous concluding observations.**

Legal framework on racial discrimination

7. The Committee regrets that, despite its previous recommendations (ibid., paras. 7–8), the definition of racial discrimination in the Constitution is still not in line with article 1 of the Convention, and that there is still no comprehensive legislation prohibiting racial discrimination in the State party (arts. 1 and 2).

8. **The Committee reiterates its previous recommendations that the State party ensure that its definition of racial discrimination is in line with article 1 (1) of the Convention, and include the grounds of national or ethnic origin, colour and descent. The Committee also urges the State party to adopt specific comprehensive legislation prohibiting direct and indirect racial discrimination, in line with articles 1 and 2 of the Convention.**

National human rights institution

9. The Committee is concerned that the process of adopting a human rights commission bill was interrupted in 2012 and that no progress has been made since then in establishing a national human rights institution.

10. **Noting the State party's acceptance to follow up on a recommendation from the universal periodic review in 2017 that it accelerate efforts towards the establishment of a national human rights institution, the Committee recommends that the State party establish a national human rights institution with a broad mandate to promote and protect human rights, in compliance with the principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles).**

Reservation to article 4

11. The Committee regrets that the State party continues to maintain its reservation to subparagraphs (a) and (b) of article 4, which may affect the full implementation of the Convention (art. 4).

12. **Recalling its general recommendation No. 35 (2013) on combating racist hate speech, which outlines diverse measures to combat racist hate speech effectively while protecting the legitimate right to freedom of expression, the Committee recommends that the State party examine the possibility of withdrawing its reservation to article 4 of the Convention and provide information to the Committee on the precise effect of the reservation.**

Hate speech and hate crimes

13. The Committee welcomes measures taken by the State party to address hate speech, including the adoption of the Act on the Promotion of Efforts to Eliminate Unfair Discriminatory Speech and Behaviour against Persons Originating from Outside Japan (Hate Speech Elimination Act) in June 2016. However, it remains concerned that:

(a) The scope of the Act is too narrow, is limited to hate speech towards persons "lawfully residing in Japan" and may provide very limited remedies for ethnic minorities in the State party;

(b) Even after the passage of the Act, hate speech and incitement to violence continue in the State party, in particular through rallies at which demonstrators use violent hate speech against ethnic minority groups, such as the Koreans;

(c) Hate speech through the Internet and the media, and the use of hate speech and discriminatory statements by public officials, continue;

(d) Such crimes are not consistently investigated and prosecuted and public officials and private individuals remain unaccountable for racist hate speech and hate crimes (art. 4).

14. **Reiterating its previous recommendation (CERD/C/JPN/CO/7-9, para. 11) and recalling its general recommendation No. 35, the Committee recommends that the State party:**

(a) **Amend the Hate Speech Elimination Act to ensure that it has the proper scope, covers hate speech against any person and provides sufficient remedies for persons belonging to ethnic minorities;**

(b) **Adopt comprehensive legislation on the prohibition of racial discrimination covering crimes not covered by the Hate Speech Elimination Act, in order to strengthen the legal framework and access to remedies by victims;**

(c) **With due regard to freedom of expression and assembly, ensure that the use of hate speech and incitement to violence during rallies is prohibited and that perpetrators are sanctioned;**

(d) **Take effective measures to combat hate speech on the Internet and in the media, including through the establishment of a self-regulating mechanism;**

(e) **Provide detailed information in the next periodic report about the implementation and impact of measures such as the Broadcast Act on preventing incitement to racial discrimination and racist violence through the media;**

(f) **Deliver training programmes on hate crimes and the Hate Speech Elimination Act for law enforcement officers, including police, prosecutors and the judiciary, covering, among other things, the proper methods for identifying the racist motive behind such crimes, registering complaints and investigating and prosecuting incidents;**

(g) **Investigate and apply appropriate sanctions for hate crimes, racist hate speech and incitement to hatred by private individuals or public officials, including politicians and media professionals;**

(h) **Provide statistics on investigations, prosecutions and convictions, disaggregated by the national origin and ethnicity of the victims, in its next periodic report;**

(i) **Enact an action plan to eliminate hate crimes, hate speech and incitement to violence in the State party with concrete goals and measures and appropriate monitoring;**

(j) **Conduct educational campaigns to address the root causes of prejudice and promote tolerance and respect for diversity, in particular focusing on the role and responsibilities of journalists and public officials.**

Situation of the Ainu people

15. While noting recent efforts by the State party to protect and promote the rights of the Ainu people, the Committee is concerned that:

(a) Cases of discrimination against Ainu in employment, education and access to public services continue to be reported and that, despite some improvements, there remains a gap between the living standards of Ainu and those of other residents in Hokkaido;

(b) While some efforts are being made to preserve Ainu language and culture, the land and natural resource rights and the linguistic and cultural heritage of the Ainu people are not sufficiently protected;

(c) The proportion of Ainu on consultative bodies remains low, and only about a third of the members of the Council for Ainu Policy Promotion are Ainu (art. 5).

16. **Recalling its general recommendation No. 23 (1997) on the rights of indigenous peoples, the Committee recommends that the State party:**

(a) **Step up efforts to eliminate discrimination against Ainu in employment, education and access to services;**

(b) **Ensure monitoring of the implementation and impact of current efforts, such as the "Third Promotion Policy for the Improvement of Ainu People's Life", and provide information on this and other measures taken to improve the living standard of Ainu in its next periodic report;**

(c) **Adopt measures to protect the land and natural resource rights of the Ainu people, and continue to step up efforts for the realization of their rights to their culture and language;**

(d) **Increase the proportion of Ainu representatives on the Council for Ainu Policy Promotion and other consultative bodies.**

Situation of the Ryukyu/Okinawa peoples

17. The Committee is concerned that the Ryukyu/Okinawa are not recognized as indigenous peoples despite its previous recommendation (CERD/C/JPN/CO/7-9, para. 21) and recommendations from other human rights mechanisms. The Committee is also concerned at reports of violence against women in Okinawa, and challenges reportedly faced by the Ryukyu/Okinawa peoples related to accidents involving military aircraft in civilian areas, owing to the presence of a military base of the United States of America on the island of Okinawa (art. 5).

18. **The Committee recommends that the State party reconsider its position on recognizing the Ryukyu as indigenous peoples and step up measures to protect their rights. The Committee recommends that the State party ensure the proper safety and protection of Ryukyu/Okinawa persons, including by protecting Ryukyu/Okinawa women from violence and ensuring proper prosecution and conviction of perpetrators of violence against them.**

Situation of the Burakumin

19. The Committee, while welcoming the adoption of the Act on the Promotion of the Elimination of Buraku Discrimination in 2016, regrets that a definition of Burakumin does not exist in this Act or elsewhere. The Committee is concerned that discrimination continues against Burakumin in employment, housing and marriage. It is also concerned that illegal access to and publication on the Internet of family data and information concerning Burakumin may subject them to further discrimination. The Committee is further concerned by the absence of information on resources allocated to implement the Act on the Promotion of the Elimination of Buraku Discrimination (art. 5).

20. **Bearing in mind its general recommendation No. 29 (2002) on descent in the context of article 1 (1) of the Convention, the Committee recommends that the State party:**

(a) **Adopt a clear definition of Burakumin in consultation with the Buraku people;**

(b) **Identify discrimination against Burakumin as discrimination based on descent;**

(c) **Provide further information on steps taken to implement the Act on the Promotion of the Elimination of Buraku Discrimination and its impact in the State party's next periodic report;**

(d) **Step up efforts to eliminate discrimination against Buraku persons in employment, housing and marriage;**

(e) **Provide information on measures taken to improve the socioeconomic situation of Burakumin since the expiration of the Dowa Special Measures Act in 2002;**

(f) **Ensure consultation with the Buraku people on all policies and measures that have an impact on their rights;**

(g) **Ensure that family data of Burakumin is kept confidential, and that cases related to the abuse of family registration data are investigated and prosecuted and that the perpetrators are sanctioned;**

(h) **Provide adequate funding for implementation of the Act on the Promotion of the Elimination of Buraku Discrimination.**

Situation of Koreans

21. The Committee is concerned that Koreans who have lived for multiple generations in Japan remain foreign nationals, do not have the right to vote in local elections and cannot serve as national public servants engaging in the exercise of public authority or decision-making. It is also concerned at reports that certain Korean schools do not receive support from the High School Tuition Support Fund. The Committee is further concerned by reports that many Korean women suffer multiple and intersecting forms of discrimination based on nationality and gender, and suffer anxiety because of hate speech against their children.

22. **Bearing in mind its general recommendation No. 30 (2004) on discrimination against non-citizens, the Committee recommends that the State party ensure that Koreans who have lived in Japan for many generations are allowed the right to vote in local elections, and to serve as national public servants who can also engage in the exercise of public authority and decision-making. The Committee reiterates its previous recommendation (CERD/C/JPN/CO/7-9, para. 19), that the State party ensure that Korean schools are not discriminated against with regard to funding from the High School Tuition Support Fund, to ensure that Korean students have equal educational opportunities, without discrimination. The Committee recommends that the State party make efforts to ensure that Korean women and children are protected from multiple forms of discrimination and hate speech.**

Profiling and surveillance of Muslims

23. The Committee is concerned by the reported continuation of ethnic or ethno-religious profiling and surveillance of Muslims of foreign origin by law enforcement officials (art. 5).

24. **Bearing in mind its general recommendation No. 31 (2005) on the prevention of racial discrimination in the administration and functioning of the criminal justice system, the Committee recommends that the State party put an end to ethnic or ethno-religious profiling and surveillance of Muslims of foreign origin by the police and undertake thorough and impartial investigations into all allegations of profiling and mass surveillance, holding those responsible accountable and providing effective remedies, including guarantees of non-repetition.**

Intersecting forms of discrimination and violence against women

25. The Committee remains concerned at reports of intersecting forms of discrimination against foreign, indigenous and minority women based on their national origin, ethnicity and gender and that they face various specific obstacles in overcoming poverty and in access to education, health care and employment. They often suffer from anxiety and psychological distress because of the stigma and hate speech against them and their families. The Committee is also concerned at the continued reports of violence against foreign, indigenous and minority women and at the lack of information on measures taken to address violence against them, including under the Fourth Basic Plan for Gender Equality (2015), and by the lack of data on investigations, prosecutions and convictions of perpetrators of such violence. Furthermore, the Committee reiterates its previous concern (ibid., para. 17) that article 22-4 of the Immigration Control Act may prevent foreign women who are victims of domestic violence by their husbands from leaving abusive relationships and from seeking assistance, for fear of having their residency revoked.

26. **Recalling its general recommendations No. 25 (2000) on gender-related dimensions of racial discrimination and No. 30 (2004) on discrimination against non-citizens, the Committee recommends that the State party:**

(a) **Ensure dedicated attention to women suffering from intersecting forms of discrimination, and collect relevant statistics to better understand and address the specific challenges facing such women;**

(b) **Ensure that foreign, indigenous and minority women have the right and opportunity to participate in decision-making processes, especially when it affects their own situation;**

(c) **Take immediate measures to prevent violence against foreign, minority and indigenous women, including through the proper registration of violent crimes against them and the investigation, prosecution and conviction of the perpetrators of such violence. The Committee requests information in the State party's next periodic report on specific measures under the Fourth Basic Plan for Gender Equality (2015) to prevent violence against foreign, minority and indigenous women, and data on reported crimes of violence against women, disaggregated by the ethnicity of the victims, including the number of such reports and the number of investigations, prosecutions and convictions. The State party should also amend its legislation to ensure that it does not have the effect of forcing foreign women to remain in abusive relationships for fear that they will lose their residency status or be deported.**

Comfort women

27. While noting information provided by the State party on the efforts to resolve the issue of "comfort women", including the recent agreement with the Republic of Korea in 2015, the Committee is concerned at reports that these efforts do not take a fully victim-centred approach, that the surviving comfort women were not adequately consulted and that this solution did not acknowledge unequivocal responsibility for the human rights violations committed against these women by the Japanese military before and during the Second World War. The Committee is also concerned by statements of some public officials, minimizing the responsibility of the Government with respect to comfort women, and their potential negative impact on survivors.

28. **The Committee recommends that the State party ensure a lasting solution to the issue of comfort women with a victim-centred approach, inclusive of comfort women of all nationalities, accepting responsibility for its role in the violation of the human rights of these women. The Committee requests detailed information in its next periodic report on efforts to resolve the issue of comfort women, including adequate measures addressing surviving comfort women and their families.**

Situation of migrants

29. The Committee is concerned at continued reports that migrants and their descendants who were born, raised and educated in the State party still face entrenched societal discrimination, including restricted access to housing, education, health care and employment opportunities (art. 5).

30. **The Committee recommends that the State party take measures to address the root causes of societal discrimination against migrants and take measures to ensure their equal access to housing, education, health care and employment opportunities, without discrimination.**

Technical intern training programmes for foreigners

31. The Committee, while welcoming the enforcement of the Act on Proper Technical Intern Training and Protection of Technical Intern Trainees in November 2017 and measures taken to revise the technical intern training programme, is nevertheless concerned that there is insufficient government oversight and a lack of information on the implementation and impact of the Act.

32. **The Committee recommends that the State party ensure that the technical intern training programme is properly regulated to ensure compliance with the Act on Proper Technical Intern Training and Protection of Technical Intern Trainees, and that it is monitored by the Government. The Committee requests information on the implementation and impact of the Act in the State party's next periodic report.**

Situation of non-citizens

33. The Committee is concerned that:

(a) Non-citizens have reportedly been denied housing and employment because they are foreign nationals;

(b) Foreign nationals and individuals with a foreign appearance have reportedly been denied entry to and services of certain privately owned facilities like hotels and restaurants that otherwise serve the public, including through the posting of signage reading "Japanese only";

(c) Non-citizens, in particular Koreans, continue to be excluded from the national pension scheme because of the age requirement;

(d) The State party has not yet amended its legislation to allow non-citizens to be eligible for basic disability pensions;

(e) Non-citizens and long-term foreign residents and their descendants remain excluded from public positions that engage in the exercise of public authority or public decision-making because they do not have Japanese nationality;

(f) Some permanent residents must obtain a permit to re-enter the country prior to departing, even if they are only leaving for one day, while others do not need such a permit.

34. **Bearing in mind the Committee's general recommendation No. 30, the Committee recommends that the State party:**

(a) **Ensure access to housing and employment to non-citizens and foreign nationals without discrimination;**

(b) **Create and enforce legislation against the posting of discriminatory signs and the practice of excluding public services by privately owned facilities, such as hotels and restaurants, to persons on the basis of being a foreigner or of foreign appearance;**

(c) **Ensure that non-citizens are included in the national pension scheme;**

(d) **Amend legislation to allow non-citizens to be eligible for basic disability pensions;**

(e) **Allow non-citizens, especially long-term foreign residents and their descendants, to have access to public positions that engage in the exercise of public authority or public decision-making;**

(f) **Eliminate the permit requirement prior to departure for some permanent residents so that they may enter and exit the country in the same manner as other permanent residents;**

(g) **Consider ratifying the Convention relating to the Status of Stateless Persons and the Convention on the Reduction of Statelessness.**

Refugees and asylum seekers

35. The Committee is concerned by the reportedly very low acceptance rate of asylum applications by the State party (19 out of 11,000 applications). It is also concerned by the detention of asylum seekers for indeterminate periods, without establishing fixed time limits for their detention. The Committee is further concerned that applicants for refugee status normally may not work or receive social welfare, leaving them dependent on overcrowded government shelters or vulnerable to mistreatment and labour exploitation.

36. **Recalling its general recommendation No. 22 (1996) on article 5 of the Convention on refugees and displaced persons, the Committee recommends that the State party ensure that all applications for asylum status receive due consideration. The Committee also recommends that the State party introduce a maximum period for immigration detention, and reiterates its previous recommendation (CERD/C/JPN/CO/7-9, para. 23) that detention of asylum seekers should only be used**

as a measure of last resort and for the shortest possible period of time, and that efforts should be made to prioritize alternative measures to detention. The Committee recommends that the State party allow applicants for refugee status to work, six months after they have submitted their applications.

Trafficking in persons

37. While noting the information provided by the State party on efforts to address trafficking in persons, including the adoption of the updated Action Plan to Combat Trafficking in Persons in 2014, the Committee is concerned at reports that minority women and girls are still subject to trafficking in the State party, in particular for sexual exploitation. The Committee is also concerned that the State party has not yet adopted specific legislation criminalizing trafficking in persons, and that the number of arrests and convictions is low.

38. **The Committee recommends that the State party step up efforts to combat trafficking in persons. It also recommends that the State party adopt specific legislation criminalizing trafficking in persons, and ensure that it thoroughly investigates, prosecutes and punishes perpetrators. The Committee requests the State party to provide information on the impact of the Action Plan to Combat Trafficking in Persons in preventing trafficking, in particular of minority women and girls, and to provide data on the number of investigations, prosecutions and convictions of perpetrators of trafficking, disaggregated by the nationality of the victims.**

D. Other recommendations

Ratification of other instruments

39. **Bearing in mind the indivisibility of all human rights, the Committee urges the State party to consider ratifying those international human rights instruments that it has not yet ratified, in particular treaties with provisions that have direct relevance to communities that may be subjected to racial discrimination, including the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty; the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families; the International Labour Organization (ILO) Discrimination (Employment and Occupation) Convention, 1958 (No. 111); and the ILO Indigenous and Tribal Peoples Convention, 1989 (No. 169).**

Follow-up to the Durban Declaration and Programme of Action

40. **In the light of its general recommendation No. 33 (2009) on follow-up to the Durban Review Conference, the Committee recommends that the State party give effect to the Durban Declaration and Programme of Action, adopted at the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance in 2001, taking into account the outcome document of the Durban Review Conference held in April 2009, and requests the State party to include information thereon in its next periodic report.**

International Decade for People of African Descent

41. **In the light of General Assembly resolution 68/237, the Committee requests that the State party include in its next periodic report precise information on the concrete measures adopted in the framework of the International Decade for People of African Descent, taking into account the Committee's general recommendation No. 34 (2011) on racial discrimination against people of African descent.**

Consultations with civil society

42. **The Committee recommends that the State party continue consulting and increasing its dialogue with civil society organizations concerned with human rights protection, in particular those working to combat racial discrimination, in the preparation of the next periodic report and in its follow-up to the present concluding observations.**

Declaration under article 14 of the Convention

43. **The Committee encourages the State party to make the optional declaration provided for in article 14 of the Convention recognizing the Committee's competence to receive and consider individual communications.**

Amendment to article 8 of the Convention

44. **The Committee recommends that the State party ratify the amendment to article 8 (6) of the Convention adopted on 15 January 1992 at the fourteenth meeting of States parties to the Convention and endorsed by the General Assembly in its resolution 47/111.**

Common core document

45. **The Committee encourages the State party to update its common core document, which dates to 2012, in accordance with the harmonized guidelines on reporting under the international human rights treaties, in particular those on the common core document, as adopted at the fifth inter-committee meeting of the human rights treaty bodies held in June 2006 (HRI/GEN/2/Rev.6, chap. I). In the light of General Assembly resolution 68/268, the Committee urges the State party to observe the limit of 42,400 words for such documents.**

Follow-up to the present concluding observations

46. **In accordance with article 9 (1) of the Convention and rule 65 of its rules of procedure, the Committee requests the State party to provide, within one year of the adoption of the present concluding observations, information on its implementation of the recommendations contained in paragraphs 10 and 32 above.**

Paragraphs of particular importance

47. **The Committee wishes to draw the attention of the State party to the particular importance of the recommendations contained in paragraphs 14, 22 and 34 above and requests the State party to provide detailed information in its next periodic report on the concrete measures taken to implement those recommendations.**

Dissemination of information

48. **The Committee recommends that the State party's reports be made readily available and accessible to the public at the time of their submission and that the concluding observations of the Committee with respect to those reports be similarly publicized in the official and other commonly used languages, as appropriate.**

Preparation of the next periodic report

49. **The Committee recommends that the State party submit its combined twelfth to fourteenth periodic reports, as a single document, by 14 January 2023, taking into account the reporting guidelines adopted by the Committee during its seventy-first session (CERD/C/2007/1) and addressing all the points raised in the present concluding observations. In the light of General Assembly resolution 68/268, the Committee urges the State party to observe the limit of 21,200 words for periodic reports.**